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TWO ACTIONS

FOR

Criminal Conversation,

WITH THE WHOLE OF THE EVIDENCE;

Both tried before the Right Hon. LORD KENYON,

In the COURT of KING'S-BENCH, WESTMINSTER-HALL,

On WEDNESDAY, JUNE 26, 1790:

THE FIRST BETWEEN

HENRY CECIL, Esq. MEMBER OF PARLIAMENT, and PRESUMPTIVE
HEIR to the EARL of EXETER, Plaintiff,

AND

The Rev. WILLIAM SNEYD, Defendant,

FOR

Cohabiting with MRS. CECIL,

In which the Jury gave

ONE THOUSAND POUNDS DAMAGES.

THE SECOND BETWEEN

HOOKE BARTTELOT, Esq. Plaintiff,

AND

SAMUEL HAWKER, Esq. Defendant,

FOR

Cohabiting with MRS. BARTTELOT,

In which the JURY gave

SEVEN HUNDRED POUNDS DAMAGES.

Both these interesting TRIALS were taken in SHORT-HAND, by a STUDENT
of the INNER TEMPLE.

London:

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1790.

[Price Two Shillings.]

COUNSEL in the *First Cause*.

CECIL AGAINST SNEYD.

For the PLAINTIFF, { Mr. BOWER
AND
Mr. WOOD.

For the DEFENDANT, Mr. ERSKINE only.

COUNSEL in the *Second Cause*.

BARTTELOT AGAINST HAWKER.

For the PLAINTIFF, { Mr. ERSKINE,
Mr. BALDWIN, and
Mr. SHEPARD.

For the DEFENDANT, { Mr. BOWER
AND
Mr. LEWES.



HENRY CECIL, Esq.

AGAINST

The Rev. WILLIAM SNEYD.

MR. HOOD opened the Pleadings.

The declaration stated, That the Reverend Mr. SNEYD had seduced, debauched, and carried off, Mrs. CECIL, the plaintiff's wife, with the usual formal vows upon these occasions, concluding to the plaintiff's damage TEN THOUSAND POUNDS.

To this charge the defendant pleaded **Not Guilty**; and therefore issue was joined.

B

Mr.

Mr. BOWER opened the plaintiff's case as follows :

May it please your Lordships, and you, Gentlemen of the Jury,

I am Counsel in this case for the plaintiff, Mr. Cecil, who brings the present action for an injury, which has been of late too much the subject of complaint—an injury of the most serious nature which one man can possibly commit against another.

After the plaintiff married his lady, he lived with her for many years in the greatest domestic happiness and tranquillity, until the incident which I am about to relate happened, which interrupted and destroyed all the happiness they enjoyed in the honourable relation of husband and wife.

The plaintiff, Mr. CECIL, is a gentleman of high rank and family, and presumptive heir to the Earl of Exeter, also a Member of Parliament. Thirteen or fourteen years ago, he married Miss Vernon, his present wife, then a young lady, the only daughter and heiress of Mr. Vernon, in Worcestershire, a gentleman also of very large fortune.

From

From the year of their marriage, 1776, until the time when the injury was done by Mr. Sneyd, I shall prove to you, that no two persons could live in a state of greater affection or greater harmony than Mr. and Mrs. Cecil; he had not the smallest suspicion of her infidelity, and loved her with the most ardent and tender affection.

In the year 1780, the Living of *Hanbury*, which was in the gift of Mr. Cecil, having become vacant, he presented a friend of his to that living; and as it was not convenient for him to reside on the spot, he introduced Mr. Sneyd as his curate, who, in his absence, was to perform the duties of his office. Although Mr. Sneyd came to this parish in the character of a curate, he was the son of a respectable gentleman, the younger son of a family in Staffordshire. Under this description he was likely to be treated with affection and politeness.

Mr. Cecil had a respect for the person and family of this young man; he accordingly introduced him into his family, and received frequent visits from him: the defendant often dined with the plaintiff; and being in a poor state of health when the weather was bad, he was constantly accommodated with a bed in the plaintiff's house, and was treated in every respect

respect as a gentleman, and as a proper guest to visit in his house.

From the year 1780, when the defendant first came to Hanbury, until the year 1789, when he left it, Mr. Cecil had no reason to repent his acquaintance with Mr. Sneyd; but it should seem that some intimacy had subsisted for some time prior to 1789, between Mr. Sneyd and Mrs. Cecil, from the facts which I am about to state.

About the middle of June last, Mrs. Cecil prevailed upon her husband to go on a party of pleasure to Birmingham, which is about 18 or 20 miles distant from Mr. Cecil's house; it was intimated to Mr. Cecil by his Lady, that the distance was too great to go with their own horses, and therefore that it would be better to take post horses.—Mr. Cecil complied with the request.—He, Mrs. Cecil, and Mr. *Edward Sneyd*, set out for Birmingham;—Mr. Cecil returned back to Hanbury alone, in the evening, and Mrs. Cecil was to have followed him, in company with Mr. Edward Sneyd.

When

When Mrs. Cecil had remained out much longer than her husband expected, he began to be anxious about her, but had no idea of what was going forward; and as she did not return, he made what enquiries he could, but could not find her out; and this enquiry was made more difficult, by Mrs. Cecil and Mr. Sneyd assuming fictitious names.

The moment that Mr. Cecil had discovered that his wife had eloped, he left his house, and has never since returned to his friends.

From the disagreeable situation into which he has been thrown by the gross misconduct of his wife, he has not been able to pay visits to his friends, but now resides somewhere beyond the seas.

I cannot say what became of Mrs. Cecil and Mr. Sneyd, for a day or two after they left Birmingham, where Mr. Sneyd then resided in a very poor state of health.

I shall pass over every thing until they came to *Exeter*. When they arrived there, they both took apartments at *Thompson's Hotel*, where they slept three or four nights as husband and wife, under the name of *Mr. and*

C

Mrs.

Mrs. Benson. They then came to an obscure village in Devonshire, where they lived three or four months in lodgings; they then quitted that place, and came to London, where they now reside;—in separate lodgings, indeed—but visit each other every day.

Gentlemen of the Jury,

This is the whole account of the business, as far as is necessary to lay before you. You know, and will feel, the nature of this sort of injury. You see the situation of the parties, and the rank of Mr. Cecil, and the necessity of his taking care that no spurious issue be imposed on his family. You will attend to the evidence which I shall now lay before you, and give such a compensation in damages as substantial justice requires.

EVIDENCE FOR THE PLAINTIFF.

WILLIAM WELLS, *examined by Mr. Wood.*

Question.

Mr. Wells, is that a true copy of the register of the marriage of Mr. and Mrs. Cecil?

Answer.

It is, Sir.

Then

Then give it in to Mr. Lotown to be read.

The register was read accordingly ; it stated, That Mr. HENRY CECIL and Miss VERNON, were married on the 23d of May, 1776, and that the marriage was solemnized at Saint George's, Hanover-Square.

WILLIAM JANSEY, *examined by Mr. Wood.*

Question.

Mr. Jansey, do you know the plaintiff and defendant in this cause ?

Answer.

I do, Sir ; I lived as butler with the plaintiff.

Question.

At what time did you come into his service ?

Answer.

I came to live with Mr. Cecil in the year 1785, and lived with him near four years and a half.

Question.

Now, during that time, had you any opportunity of observing how he treated his wife ?

Answer.

I always thought he was a very good husband ; they appeared to live very happily together, and he treated her with tenderness and affection.

Question.

Question.

Did you know Mr. Sneyd, the defendant ?

Answer.

I did ; he was the curate of Hanbury.

Question.

How long did he continue there ?

Answer.

He was curate there when I came to Mr. Cecil, and continued until the month of June, 1789.

Question.

Did he visit in your master's family ?

Answer.

Yes, Sir, frequently.

Question.

How did your master behave to him ?

Answer.

He always behaved to him very politely, and treated him as a gentleman.

Question.

Did he ever stay all night at your master's house ?

Answer.

Sometimes he did ; he was sometimes there at supper ; and in bad weather he slept there frequently.

Question.

(9)

Question.

Do you remember your master and mistress going to Birmingham?

Answer.

I remember Mr. and Mrs. Cecil going to Birmingham in June 1789.

Question.

When did Mr. Sneyd leave Hanbury?

Answer.

About the end of May, or the beginning of June 1789.

Question.

How far is Birmingham from your master's house?

Answer.

About eighteen or twenty miles.

Question.

When did your master return from Birmingham?

Answer.

He came home the same night.

Question.

Did Mrs. Cecil come home with him?

Answer.

She did not.

D

Mr.

Mr. JANSEY *cross-examined by Mr. ERSKINE.*

Question.

Mr. Jansey, if I understand your evidence aright, it is this : That you became butler to the plaintiff in 1785, and remained in his service until about the middle of June 1789. You say, Mr. Sneyd was curate of Hanbury when you came there ; that he frequently visited in your master's family, and was treated as a gentleman, and that he sometimes supped ; and in bad weather slept there.—Now, at what time did you ever observe, in the time from the month of June 1785 until May 1789, when Mr. Sneyd left the place, any assiduity of Mr. Sneyd towards Mrs. Cecil, or of Mrs. Cecil towards him ?

Answer.

They were frequently walking out together ; they were fond of *fishing*.

Question.

Your master knew this of course ?

Answer.

I suppose so. Mr. Cecil was sometimes with them ; but they were often together by themselves.

Question.

Question.

Mr. Cecil knew that Mr. Sneyd and Mrs. Cecil went on those fishing parties together? he knew they were secreted a good deal together, and used to be in private?

Answer.

He knew they used to walk out together in the fields;— I do not believe that he knew they used to be in private together.

Question.

Sir, you are the most incomprehensible fellow I ever heard of in my life—Did not the plaintiff know that Mr. Sneyd and Mrs. Cecil used to be often together; and was it not the constant course for two years?

Answer.

They were very often alone.

Question.

Do you remember Mr. Cecil's going away and leaving his house?

Answer.

I do.

Question.

Do you recollect what passed there before his leaving the house?

Answer.

Answer.

I do not.

Question.

Had not Mr. Sneyd left Hanbury, and gone to Birmingham, in the month of May 1789?

Answer.

I believe it was in May or in June.

Question.

Do you remember his being delirious in a fever?

Answer.

I do.

Question.

When was that?

Answer.

About a week before he left Hanbury.

Question.

Has he recovered from that delirium?

Answer.

I know not ; I have seen him since, and he looked better—I never saw him look better than when I saw him last.

Question.

What did you mean ; you said, first that this gentleman was delirious in a fever ; then I asked you, whether he was recovered ? you said you did not know ; and then you said,
you

you knew he was well, with the greatest unconcern in the world—Look to the Jury, Sir—You say you never saw him look better ?

Answer.

By his look, and his face, and his fresh colour, he seemed to be well.

Question.

Did you happen to know, from your master, the conversation that took place between the unhappy gentleman and him, previous to the time of his leaving his house ?

Answer.

I do not.

Question.

Has Mr. Cecil never told you that he had no suspicion, and that he did not know any thing of any infidelity in his wife, until this gentleman himself (the defendant) told you of the situation he was likely to be in with his wife, which was the cause of his leaving Hanbury ?

Answer.

I do not know.

E.

Mr.

Mr. ERSKINE.

The nature of this case is such, that I cannot ask questions here; the gentleman himself, they say, is beyond the seas.

LORD KENYON.

We can only go by the evidence.

It was said by the Counsel at the Bar, that the plaintiff was a Member of Parliament.

To which Mr. ERSKINE said, That he was not—for that for some time there had been no Parliament.

LORD KENYON.

Mr. CECIL was certainly in the last Parliament, and was one of the representatives for Stamford.

Mr. JANSEY cross-examined further by Mr. ERSKINE.

Question.

Do you mean to swear, Sir, that you never heard this circumstance mentioned in your presence; that the first time
your

your Master heard of any attachment between your mistress and Mr. Sneyd, was when he came to Mr. Sneyd's sick-bed, and when he told him of it with tears in his eyes ?

Answer.

I was not in the room.

L O R D K E N Y O N.

Did you ever hear your master say any thing about it ?

Answer.

I never did ; I have heard it from the servants.

M r . E R S K I N E.

My Lord, I do not know how to put the question.

L O R D K E N Y O N.

Mr. Erskine, you have put in all different ways.

M r . E R S K I N E.

Do you know where Mr. Sneyd went when he left Hanbury ?

Answer.

Answer.

He went into his father's carriage.

Question.

Did he go to Birmingham ?

Answer.

He went the Birmingham road.

Question.

What time was it in May ?

Answer.

I am not clear what time it was ; so far as I can recollect, it was either the latter end of May, or beginning of June, 1789.

Question.

What state of health was he in at the time he went away ? because I have witnesses to that.

Answer.

He seemed a little better.

Question.

Was not his complaint at that time a fever and delirium ?

Answer.

I believe so.

Question.

Was Mr. Cecil present when Mr. Sneyd went into his father's carriage at Hanbury Hall in the month of May ?

Answer.

Question.

Answer.

LORD KENYON.

Answer.

MR. ERSKINE.

You say, you recollect your master and mistress, and Mr. Edward Sneyd going to Birmingham in a party in June last;

last ; now, upon your oath, Sir, were they not going on a visit to Mr. Sneyd.

Answer.

I cannot tell.

Question.

Were they not going to Birmingham ?

Answer.

They were.

Question.

How came Mr. Edward Sneyd to accompany them to Birmingham ?

Answer.

He had been some time in the house.

Question.

Was not the adultery of this woman, Mrs. Cecil, notorious in the husband's family at the time they set out for Birmingham ?

Mr. B O W E R.

I submit to your Lordship that this is not evidence.

LORD

LORD KENYON.

I think this question may be asked ; whether it was not matter of notoriety that she was false to her husband's bed ?

Mr. ERSKINE.

Was it not notorious in your master's family at that time, that this adultery had been committed, and that it had been discovered to your master ?

Answer.

I have heard that it was discovered to my master.

Question.

Then you have reason to believe, from the common report of the family, that the adultery of this lady was known to her husband ?

Answer.

I believe it was.

Mr. BOWER.

I submit to your Lordship, that this is nothing like evidence.

Mr.

Mr. ERSKINE.

It is my duty to try if I can, consistently with the rules of evidence, get at this fact, not only that it was notorious in the family, but also that this notoriety was accompanied with the discovery of it to the husband.

LORD KENYON.

If you can, obtain an actual discovery of it.

Mr. ERSKINE.

Have you no reason to believe that Mr. Cecil did know of it before he went to Birmingham?

LORD KENYON.

Did you ever hear it spoken of in your master's presence?

Answer.

I did not.

Mr.

Mr. ERSKINE.

Did you discover no alteration in your master's appearance before he went to Birmingham?

Answer.

He appeared the same; he did not seem to be ill affected with any thing.

Mr. ERSKINE to the Witness.

Now I ask you, Sir, if, since it was notorious to the family that your mistress had been guilty of adultery, how happened it that you did not mention it to your master? particularly, since you discovered by his appearance that he did not know it? was it like the fidelity of a servant, not to communicate such an affair to his master?

Answer.

I made no mention of it to my master.

Question

How many servants has Mr. Cecil?

Answer.

Three or four and twenty.

G

Question.

Question.

Now, Sir, I ask you, whether these servants did not know and speak of it as a fact, and whether it did not engross every part of their conversation ?

Answer.

They did not all speak of it, because they were not all in the house.

Question.

Then you had no reason to know that the husband, Mr. Cecil, set out for Birmingham, to indulge his wife with a sight of this gentleman, to take her final leave of him ?

Answer.

I do not know that he did that ; but I know they were going to Birmingham.

Question.

Are any of the servants here that went that journey ?

Answer.

No, Sir.

ANN VINICAN examined by Mr. BOWER.

Question.

Mrs. VINICAN, what are you ?

Answer.

Answer.

I and my husband are servants to Mr. Thompson, who keeps the hotel at the Church-yard at Exeter.

Question.

What were you in the house?

Answer.

I was upper chambermaid.

Question.

Do you remember any persons coming to your house who called themselves Mr. and Mrs. Benson, but whom you knew since to be Mr. Sneyd and Mrs. Cecil?

Answer.

Perfectly well.

Question.

Do you recollect in what clothes Mr. Sneyd came?

Answer.

He came in a pepper and salt coloured coat.

Question.

About what time did they come to your house?

Answer.

About the middle of June last year.

Question.

Did you know Mrs. Cecil?

Answer.

Answer.

Yes, Sir, perfectly well; I know she came to my master's house, and went by the name of Mrs. Benson.

Question.

How long did they remain at your master's house?

Answer.

Three or four days.

Question.

Now, during the time that they were at your master's house, did they sleep in different bed-chambers, or in the same.

Answer.

In the same, and in one bed:—I left them in the room together, with the candle burning,—they desired me to leave it, and said they would put it out.

Question.

Did you make the bed in the morning?

Answer.

Sir, I did.

Question.

Had it the appearance of two persons having slept in it?

Answer.

It had.

Question.

Was there any other bed in the house made for Mr. Sneyd?

Answer.

Not to my knowledge.

This concludes the evidence for the plaintiff.

DEFENCE.

Mr. ERSKINE delivered the following Speech on behalf of the defendant :

May it please your Lordship, and you, Gentlemen of the Jury,

I am of Counfel for this unfortunate defendant, who not being himself in a situation capable to give me any instructions, I am obliged to rise up, altogether uninstructed, in his defence, having nothing but this little piece of paper* that states the pleadings in my hand.

I most heartily concur in the observations which have been made by my learned friend on the subject of adultery.

* Holding up a small piece of paper, which was the only Brief he had in the cause.

H.

Either

Either as it concerns religion, or morals, or wise policy, it is the business and duty of juries to check it; and I do assure you, my Lord, I do not mean any flattery; but I say, that there is no man who has a higher respect and veneration than I have for the manner in which your Lordship has always considered these causes when they have come into court before you; and I think it unquestionably my duty here, while I am defending an unhappy man, not to strike at the happiness of society, by advancing any thing which can lessen the sanction of nuptial obligation, in which the happiness of mankind is so much involved. Indeed this cause is an awful monument, that Virtue is its own reward, and that Vices and Errors bring their own punishment along with them. It is an awful monument, that the rules of religion and morality, and the various restraints they impose on our behaviour, instead of being impositions and restraints of harsh and powerful task-masters, operate as acts of parental benevolence and affection, and that every thing which we are commanded to do, tends ultimately to our good.

This unhappy gentleman has felt it. He was a very young man, and fell into the snare of this woman, from whom the plaintiff will be relieved by your verdict.

This

This cause is only the fore-runner to that divorce which he will be entitled to receive by the proceedings of Parliament ; for I do not mean to charge Mr. Cecil, either directly or indirectly, with having connived at this criminal intercourse which took place between this unhappy gentleman and the plaintiff's wife, or to charge him with any immoral or indecent conduct whatever ; this is to be charged to that place where most undoubtedly it belongs.

This injured husband is entitled, by your verdict, to be released from those obligations which must be very distressing to him.

Gentlemen, you have no evidence here of that which is the great sting in these cases. You have no evidence before you of the seduction. It appeared in evidence, indeed, that this young curate constantly walked out in different parts with a woman who might be considered as a matron. She was possessed of no personal beauty or attractions ; but who, from the rank and dignity which she held in the country, as wife of Mr. Cecil, had an opportunity of drawing into her snare an unfortunate young man, who possessed an handsome person, which happened to attract her attention.

Gentlemen,

Gentlemen, when the defendant recollected the situation to which he was reduced, it had an effect on his mind. He fell into a delirium ; and it is a fact absolutely notorious, that no person in the family dreamed of any thing like a criminal intercourse between these parties, until it was confessed by this unhappy young man, in the hour of sickness, who was desirous of making some sort of atonement to the person whom he had injured, and to obtain his forgiveness. He was not the aggressor—but was drawn in by the allurements of this lady.

Gentlemen, can you conceive, that for a month before, the adultery of this woman was notorious in a family where there were so many servants, and that the husband should be the only man who was ignorant of it ? Although one servant might conceal it for fear, and another from want of fidelity to his master ; yet it is contrary to every rule of evidence and experience, to suppose, that in a family, consisting of so many domestics, no person should be inspired with so much honour, with so much allegiance and fidelity to the injured master, as to inform him of his wife's baseness. Why did none of them approach the husband ?—Because they knew he was already acquainted with it.

I do.

I do not mean to tax Mr. Cecil with being that unconcerned man which he was described to be by one of his domestics*. It is not true that he appeared always with the same face.

He was disposed at one time to do an act which would have tied him to this woman for ever. She fell down on her knees, and implored her husband to allow her once more to go and see this defendant, to take her final leave of him, and to give up his embraces for ever; and that she would then return to her duty. Our first parent turned towards Eve, and the plaintiff, following his example, was willing to forgive his weaker half.

This lady set out to find this miserable creature the defendant—a person lying in his bed—The moment she found him, she put a white coat upon him, clapt a false tail to his hair, and carried him off without delay, to Thompson's Hotel at Exeter!

Gentlemen, my learned friend has conducted this cause very honourably:—I am sure he will not contradict me in what I am about to say: because he knows it as well as I do, and therefore will not oblige me to call witnesses to prove it. We both know that the defendant is one of many children: that his father has very little property, and is un-

* See the evidence of the butler.

able to pay large damages. The defendant himself is a curate, without any preferment whatever; and if you were to give a verdict for damages any thing like that which a man of fortune would be obliged to pay, he would be utterly undone and ruined; and now he is left an awful monument—deprived of his reason, lost in his health, and miserable in the extreme.

I hope, Gentlemen, you will remember one thing—that in this case there is no evidence of seduction; and the present defendant has no resemblance to that triumphant adulterer that was tried by a Jury some time ago in this place,* and who met with the exemplary punishment which was due to his crime. The *present* defendant felt for the honour of his friend, as well as for his own situation.

Gentlemen, I shall trouble you with no more observations on this subject—This unfortunate defendant is entirely at your mercy—and I am sure you will do that which is right between both parties.

LORD KENYON'S *Charge to the Jury.*

Gentlemen of the Jury,

I have too often had an opportunity of stating to Juries the opinion which I entertain of crimes of this sort. The
punish-

* This alludes to the case of Mr. Sykes, against whom the Jury gave a verdict, and 10,000l. damages.

punishment of them is part of that public duty which the law has reposed in you—I shall only, at present, state to you who the parties are.

The plaintiff is a Gentleman of very large property, and the presumptive heir of one of the largest fortunes in the kingdom. His wife also was a Lady of great fortune.

The situation of this young man, the defendant, has been intimated to you.

This is a subject entirely for your consideration: you will not put him into a situation that will make him a prisoner for life.

The jury considered of their verdict for a few minutes, and then found for the plaintiff, Damages, *One Thousand Pounds*.

HOOKE

HOOKER BARTTELOT, Esq.

AGAINST

SAMUEL HAWKER, Esq.

MR SHEPHARD opened the pleadings.

The Declaration stated, That the defendant had seduced and debauched the plaintiff's wife, and had carnal knowledge of her.

To this Declaration the defendant pleaded **Not Guilty**; and thereupon issue was joined.

Mr. ERSKINE opened the plaintiff's case, in the following speech :

May it please your Lordship, and you, Gentlemen of the Jury,

I flatter

I flatter myself that I may, without any inconsistency,* call your serious attention to this case; for you might have observed, where my professional duty called me to defend an unfortunate man (the Reverend Mr. SNEYD), I have neither attempted to insult the Court, nor disgrace myself, in the defence of my client, by speaking lightly of the serious considerations of a Court of Justice; but every man who attends to this case, must be sensible that a most grievous injury has been sustained by the plaintiff.

Mr. BARTTELOT is a gentleman of family and fortune, who married in 1783, and lived with his wife in the greatest affection, until the time she was debauched by Mr. HAWKER, a gay military man, and an officer of dragoons.

Having ingratiated himself into this lady's affection, he took every opportunity of debauching her, and at last unfortunately succeeded.

The defence that is to be set up this day, is one of a very artful description, and I must therefore solicit your minute attention to treat it with the contempt it merits.

My learned friend, the counsel for the defendant, will

* This was an apology for the two opposite characters succeeding each other, in which the barrister appeared this day; being now for the *plaintiff*, and in the very last cause for the *defendant*, in two actions of the same nature.

have an opportunity of producing articles of separation; of disagreements and differences that happened between Mr. and Mrs. Barttelot; and I shall not, perhaps, be able to prove any act of adultery antecedent to these articles of separation; and then, most likely, I shall hear this defence from my learned friend:—"Why bring any complaint into a court of justice?—What has the husband suffered?—This is not an action to punish the immorality of the offence, but to recover a recompence to the husband for the loss of the affection and company of his wife.—What has her husband lost from being deprived of the comfort and society of a woman from whom, previous to any act of adultery, he had voluntarily separated himself?"

And I have no doubt, in such a case, if such a defence as this be proved, but it will go strongly to the mitigation of damages, although it would not be less heinous in the eye of God; yet, *quoad* the husband, it would lessen the damages. But if, on the contrary, I shall be able to prove to you, as I am instructed I shall, this defence will rebound with a tenfold force upon this gentleman.

I may not be able to prove any act of adultery; at least, I am not sure that I shall, previous to the time of the separation of this Lady from her husband.

I shall

I shall lay the case, such as it is, before his Lordship and you, his Lordship presiding over the evidence and the law, and your good sense also attending to it.

This gentleman and his lady, as already hinted, lived in the utmost harmony and confidence, until her affections were alienated from him by the seduction of the defendant.

I need not tell those who have come to that time of life at which you have arrived, that it is impossible for a man and a woman to live in peace, tranquillity, and conjugal affection with each other, where the mind of the woman is alienated by a passion for another person. From the moment any third person has been able to infuse an attachment into the breast of a woman, there is an end of that affection and attention to her husband, which alone can create reciprocity in affection; there is an end of every thing which constitutes the peace and happiness of domestic life.

This case differs very much from the other which you have tried this morning: there the injured husband may be separated from his wife; he may marry again, and have a progeny to delight him, and to inherit the great estate to which he was born: in this case, the unhappy husband, after seeing his wife debauched, must also have the mortification to see a bastard begotten on, and issuing from, the body of his wife, very soon after the separation which took place, and all this proceeding from the seduction the defendant; and, what
is.

is still worse, this bastard may possibly succeed to the plaintiff's estate.

Gentlemen, the first proof I mean to lay before you, and I must ask your particular attention to it, and if I fail in this proof, let the defendant have the benefit of it. If I am misinstructed, I shall be corrected by the evidence; but I am instructed to say, that I shall be able to prove that from the time Mr. Barttelot married——

LORD KENYON.—Mr. Erskine, will this action lie where there have been articles of separation?

MR. ERSKINE.—Yes, my lord, I think it will.

LORD KENYON.—I doubt that exceedingly. I never heard of such an action; and I doubt on principles. It does not abate the immorality of the action; it still leaves that.

MR. ERSKINE.—Gentlemen of the Jury, I felt this doubt; and, I confess, the damages must in a manner sink from under me, if the acquaintance between the husband and wife was at an end by the articles of separation, previous to any act of adultery committed by the defendant. But, I hope, my Lord will reserve that point to me, how far the action can be maintained, if the adultery is proved subsequent to these articles.

I shall be able to satisfy you, that from the period of the marriage, up to the time when Mrs. Barttelot became acquainted

quainted with this gentleman, the greatest affection and domestic comfort subsisted between her and her husband. From the moment she became acquainted with the defendant, or at least, soon after, those differences arose; that coldness, that alienation of affection succeeded, which ended in their separation. Immediately after this, Mrs. Barttelot fell into the hands of the defendant, who has lived with her, and has a child by her.

I need not describe to you the unhappy situation in which the husband is placed—deprived of the comforts of his wife, and of all domestic comfort.

Gentlemen of the Jury, It will be left to you, as good citizens, to consider a case of this sort, and you will do justice between the parties. In the last cause, the unfortunate defendant was called upon to pay *One Thousand Pounds* damages, which will make him a prisoner for life; yet, undoubtedly, when a man cannot pay in his purse, he must pay in his person. The present defendant is a man of rank in the army.

LORD KENYON.—Mr. Baldwin, Did you ever know an action like this?

Mr. BALDWIN.—No, my Lord, I never knew such an action brought.

LORD KEYNON.—I have a very strong opinion it will not ly.

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Mr.

Mr. ERSKINE.—Your Lordship fees it would be very hard on this gentleman, as it would deprive him of a divorce.

LORD KENYON.—Many persons may be in a situation that may deprive them of divorces. What Parliament might do in this case, God only knows ; they generally require a verdict at law ; but if he could not have an action, I think they would stop short of justice, if they did not dispense with it.

EVIDENCE FOR THE PLAINTIFF.

The first thing that was proved, was the marriage of Mr. and Mrs. Barttelot, which took place on the 18th of January, 1783.

JOHN HORTON *examined by Mr. SHEPARD.*

Q. Mr. Horton, do you know Mr. and Mrs. Barttelot ?

A. I do.

Q. Do you remember their being married ?

A. Yes, Sir, I do.

Q. When was it ?

A. On the 18th of January, 1783.

He was cross-examined by Mr. BOWER.

Q. Sir, I suppose you are some relation of this lady ?

A. I am her brother.

Q. Do

Q. Do you know how they lived together ; I believe they did not live in great affection ?

A. They were always quarrelling, sometime after their marriage.

Q. Within what time after their marriage ?

A. Within a month after they were married, they were often quarrelling together ; and within two months after their marriage, the family was obliged to be called in to compose their differences ; their tempers were so different, and so ill suited to each other.

Q. They were, therefore, a very unhappy couple ?

A. Quite so.

MARY ROTHE, *examined by Mr. BALDWIN.*

Q. Mrs. Rothe, do you know Mr. and Mrs. Barttelot ?

A. Yes, Sir.

Q. Where do you live ?

A. At Ashford, in Kent.

Q. Did they ever lodge at your house ?

A. They did : they came to live at my house in July 1785.

Q. How did they behave to each other ?

A. Very well.

Q. They came to your house, you say, in the month of July, 1785, pray how long did they stay ?

A. Five weeks, Sir.

Q. You

Q. You say they behaved very well to each other ?

A. At first when they came, they behaved extremely well.

Q. Did you know Captain Hawker ?

A. I did.

Q. At the time they were at your house, did you ever see Captain Hawker and Mrs. Barttelot together ?

A. Yes, Sir.

Q. Did you ever observe any thing particular between them ?

A. I have seen them behave in a manner which I looked upon to be very indecent. I saw Mr. Hawker put his hand on Mrs. Barttelot's leg, in a very indecent way.

Q. Were her clothes up ?

A. Yes, Sir, they were higher than the calf of the leg ; and Mr. Hawker put his hand——

Q. Did you communicate this to Mr. Barttelot ?

A. No, Sir, not then.

Q. Did you make any other observations on their conduct ?

A. I thought this was very unbecoming in any woman, particularly in a married woman.

Q. During the time that Mr. and Mrs. Barttelot staid at your house, did you observe any impropriety in Mrs. Barttelott's conduct towards her husband ?

A. Her conduct was such as he deserved.

Q. Did

Q. Did Mr. Barttelot behave in an affectionate manner to his wife?

A. Always, Sir.

Q. Did you observe any thing particular afterwards between them?

A. Nothing in particular.

LORD KENYON.—Where do you live, Madam?

A. I live at Ashford, in Kent, my Lord.

JOHN BARBIC, *examined by Mr. SHEPARD.*

Q. Mr. Barbic, I believe you live near Canterbury?

A. I live at Canterbury, Sir.

Q. Do you remember Mr. and Mrs. Barttelot coming to live at your house in the year 1785?

A. I do, Sir; it was some time in the month of August.

Q. Do you remember Captain Hawker visiting them?

A. Very well.

Q. After they had been there some time, did you make any observations on the conduct of Mrs. Barttelot and Mr. Hawker?

A. I entertained some suspicion of an intimacy between them?

Q. Did that suspicion arise from your own observations on their conduct?

A. It did, Sir.

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Q. During

Q. During the time that Mr. and Mrs. Barttelot lodged at your house, do you remember his going to London for a few days about some business?

A. I do.

Q. How long was that after they came to your house?

A. I do not remember.

Q. During the time that Mr. Barttelot was in London, do you recollect any circumstance relating to Capt. Hawker and Mrs. Barttelot?

A. Yes, Sir.

Q. Now will you state what the circumstance was?

A. I remember when Mr. Barttelot was from Canterbury: when I came home one night my wife told me—

Mr. BOWER.—You must not mention what your wife told you: confine yourself to that which you heard or saw.

Mr. ERSKINE.—Relate what you yourself know of this transaction.

Witness.—I heard a man's voice in Mrs. Barttelot's bed-chamber about one o'clock in the morning.

Q. In consequence of that did you watch?

A. I did not.

Q. Now, how did Mr. Barttelot behave to his wife?

A. He seemed to me to behave to her with a great deal of tenderness.

Q. Do

Q. Do you remember Mrs. Barttelot going away?

A. On leaving my house, I remember very well she went away with the maid-servant, during the absence of Mr. Barttelot.

Q. Do you remember Mr. Barttelot's returning?

A. I do.

Q. How long after?

A. About one or two days.

Mrs. BARBIC *examined by* Mr. ERSKINE.

Q. Mrs. Barbic, do you remember Mr. and Mrs. Barttelot lodging at your house?

A. Yes, Sir, I do.

Q. How did this gentleman behave to his wife?

A. So far as I saw, he always treated her with tenderness and affection.

Q. Do you remember the time of their having been visited by Captain Hawker?

A. I do.

Q. Did you observe any thing particular in his behaviour towards this lady?

A. I did.

Q. What did you observe in particular?

A. I observed a familiarity between them.

Q. Do

Q. Do you remember Mr. Barttelot's going to London for two or three days, and leaving Mrs. Barttelot at home?

A. Yes, I do.

Q. Do you remember any person being in her bed-chamber in the night?

A. I do.

Q. Who was that person?

A. Captain Hawker.

Q. Have you any doubt about it?

A. I have no doubt of it, I saw him go up stairs about twelve o'clock at night; he loitered about the door for a great while, until eleven or twelve o'clock at night, and then went up stairs.

Q. Will you swear positively that he was in Mrs. Barttelot's bed-chamber?

A. I will, and that he remained there until the next day, when I saw him come down again.

Mr. BARBIC *called again.*

Q. Is that the person whose voice you heard in the room with Mrs. Barttelot?

A. Yes, Sir, it was.

Mr. BARBIC *examined.*

Q. How long did he remain in Mrs. Barttelot's bed-chamber!

A. He

A. He remained there all night, and the next day until three o'clock in the afternoon:—the servants were then disposed all in different ways, and this gentleman came down.

Q. He had been in the bed-chamber with the lady then?

A. I heard him in her bedchamber—I told Mrs. Barttelot of it the next day, and objected to it.

Q. Had you any opportunity of examining the bed in the morning?

A. No, Sir; but I heard him in the bed-chamber, and he was there all night.

LORD KENYON.—Did you see the bed before it was made the next day?

A. No, my lord.

This Witness was cross-examined by Mr. BOWER.

Q. You did not communicate this to Mr. Barttelot?

A. No, Sir, I did not.

The Rev. Mr. BOND examined by Mr. BALDWIN.

Q. Mr. BOND.—Do you know Mr. and Mrs. Barttelot?

A. I do, I had an opportunity of seeing them very frequently.

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Q. Upon

Q. Upon those occasions, how did Mr. Barttelot behave to his wife?

A. With the greatest tendernefs.

Q. Did they feem to live happily together?

A. Very much fo.

Q. Did you happen to fee Captain Hawker there?

A. I faw him there about a year after I became acquainted with him.

Here ended the evidence for the plaintiff.

D E F E N C E.

Mr. BROWN, leading Counfel for the defendant, fpoke as follows:

May it please your Lordships, and you Gentlemen of the Jury, I muft agree with my learned friend, Mr. Erskine, that the question which you have to try, is not, Whether the defendant has been guilty of an immorality? but, Whether this breach of morality has been attended with any injury to the plaintiff?

You are not now fitting to decide on the immoral conduct of the parties, unlefs in fo far as they are connected with the
interests

interests of other persons, and unless in so far as the interests of other persons is affected by such a breach.

To say, whether adultery ought to be encouraged or discouraged, is a question which will admit of no doubt; and, about which, I trust, every man in this Court is fully agreed: but in no case that comes before a court is it more necessary to attend to the situation of the parties, than in those cases where there is a charge of seduction. In the present case, the plaintiff has no ground of complaint; because, from the commencement of their marriage, they were miserable. They were composed of materials so utterly discordant, that from the very hour the connexion took place, they found themselves in misery and in ruin.

It appears, even from the evidence of the plaintiff, that they were ruined from the time they entered into this union. The lady's own brother proved, that within two months of their marriage, they were a most miserable and wretched couple; and it is in vain to remove this impression, by calling three witnesses, who saw them only at particular times, and had no opportunity of observing their history.

I should not be the man to excuse the defendant, if he had been the original seducer: if he had corrupted this lady's mind; had alienated her affections from her husband, and had been the mischievous instrument of disturbing his domestic peace and tranquillity. But the case which I shall lay before you:

you, for I shall prove it by witnesses, I shall prove it by a part of that unhappy family, I mean Mrs. Barttelot's family; for I shall be under the necessity of calling her family, who will tell you, that before the marriage was completed, and when she might have thought she had gone too far to retreat, they advised her, that unless she thought her affections were directed where they ought, that it was not yet too late to break off before this marriage was solemnized. I must, by her father, prove to you, that in the space of one month after this marriage, there was such an ill treatment, and such quarrels between the parties, that he, on a visit from his son-in-law and daughter, spent almost a whole night in reconciling the quarrels, which within that short space had arisen between them. He will prove to you, that misery seemed to be entailed upon them, and that the family was a scene of perfect wretchedness.

Gentlemen, you will observe that it has not been attempted to be proved to you, that Mr. Barttelot ever knew of this criminal intercourse that subsisted between his wife and Mr. Hawker at Ashford, in 1785, and therefore it was not in consequence of this that the separation took place, but in consequence of that perpetual state of misery which had subsisted between them, previous to that acquaintance with Mr. Hawker, and from the time of the marriage.

And to get rid of that load of misery, at a time when he
was

was not conscious of any infidelity in his wife, he was desirous of coming into articles of separation, and to leave her at liberty to act as she pleased, after they had lived for some years in a state of the greatest unhappiness.

In the year 1786, articles of separation were entered into, and she received about one half of the annuity to which she was intitled.

In these articles it was mutually agreed between the parties, that she, Sophia, should from thenceforth live separate and apart from him, the plaintiff, at such place or places, and with such person or persons as she pleased; and that she be free from, and without molestation or hindrance by him, or any other person in or through him, in any manner, or on any account or pretence whatever; and that he the said Mr. Barttelot, his heirs and executors, should not molest or trouble, institute or prosecute, or cause to be instituted or prosecuted, any suit or suits, action or actions, in any Court or Courts whatsoever, against the said Sophia; *or against those with whom the said Sophia should live and cohabit; and if any such action or actions, suit or suits, should be commenced or instituted, then, in every such case and cases, this shall be pleaded specially in bar, and shall be considered as full recompence and satisfaction for every such action or actions.*

This extraordinary instrument was entered into between the parties, and I shall not use it for the purpose

for which it was intended. I mean to use it for a very different purpose—to shew you that Mr. Barttelot, without being privy to any adultery in his wife, entered into these articles of separation; for there is not the least evidence that it was ever communicated to him, or that there was the smallest alteration in his conduct to his wife from the time that event happened, until they separated.

I am well aware, that when a man has once seduced the affections of a woman, nothing that is done afterwards shall excuse him; it shall not be for him to say, I have seduced the affections of a wife, and her profligacy shall be my protection.

Mr. Hawker was not the seducer of her affections. She never had any affection for her husband; and, therefore, all the mischief that has happened, is not to be imputed to Mr. Hawker, which would most certainly have been the case, had Mr. and Mrs. Barttelot lived in a state of harmony and affection. He had so little regard for her, as I shall prove to you by her father, that after the articles of separation, he was boasting that he was now a free man, and that he was easy and happy that he had got rid of her.

This man, therefore, without any suspicion of his wife's infidelity, while their union continued, freely and voluntarily entered into articles of separation, which were extremely desirable on both sides, and for their mutual advantage. This
was

was clearly proved in evidence, even on the part of the plaintiff. And, Gentlemen of the Jury, as I have already hinted, you are not here to consider whether the act itself was immoral ; but as this is an action for civil damages, the single question for your consideration is, what loss the plaintiff has sustained by the conduct of the defendant ?

This young man, instead of being a man of fortune, as was stated by my learned friend, is only one of ten children, the son of a clergyman, and has only a lieutenancy in the army to support him.

How can you say, gentlemen, that the husband's peace has been destroyed by this man ?

There is all the difference in the world between this case and that which we tried this morning. There it was clearly proved by the servants of the family, that until the time of the seduction, the husband and wife lived in perfect harmony and confidence with each other. In the present case it is already in proof, and I shall prove it still more clearly, that nothing but mutual discord subsisted between these parties, from the first moment of their union, and that they were mutual torments to each other. The husband has lost nothing, he has nothing to complain of. I am very ready to admit that this is very often one of the grossest injuries which one man can do towards another ; but where the cause does not exist, the effect cannot follow. There can be

no

no loss of affection where there was no attachment. Her husband cannot say he has lost the comfort and society of his wife, where marriage was his misery.

Gentlemen of the Jury, This is the situation of the parties who are brought here before you. Punish immorality, but do not let it seduce you from the line of your duty.

From the situation of the parties, you must see that no injury has been done to the peace and comfort of Mr. Bartelot, which is the question you are to try, and not whether the defendant has been guilty of an immoral action.

This is the sort of case which is now in proof to you, and which I shall prove still further. If you find yourselves bound to give a verdict for the plaintiff, the smallest damages that can be given, will be sufficient for a husband complaining under these circumstances.

Gentlemen, there is only one other circumstance with which I shall trouble you, and that is, that two years ago an action was brought by this very person against my client, on the same account; it was given up, and an end put to it; and now, two years after the separation, and four years after the time of injury, the present action has been brought.

Under these circumstances, I submit that nominal damages will answer the justice of this case.

EVIDENCE

EVIDENCE FOR THE DEFENDANT.

Doctor HORTON examined by Mr. LEWES.

Q. Doctor, had you an opportunity of seeing the terms on which these parties lived ?

A. Soon after they were married, they lived on very indifferent terms.

Q. Did it appear to you, Sir, to be a marriage of inclination ?

A. I do not think there was much inclination in it.

Q. Did they continue to live unhappy from the time of their marriage to the their separation ?

A. Very much so, indeed.

Q. Do you remember any particular behaviour from Mr. Barttelot towards his wife ?

A. I do, Sir.

Q. How soon after the marriage ?

A. About five weeks after the marriage.

Q. Relate the nature of it.

A. They were quarrelling about going into a hackney-coach.

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LORD KENYON.—I do not want to have all the particulars.

Witness.—At night I had some difficulty to reconcile them. I was an hour and more in reconciling them.

Cross-examined by Mr. ERSKINE.

Q. I believe, Sir, you are the father of this lady?

A. I am her father.

Q. Was she brought up virtuously?

A. Virtuously, Sir!—She certainly was.

Mr. ERSKINE.—I see, Sir, you are surprised at this question, which gives me a great deal of pleasure.

Q. Did you state to Mr. Barttelot, your daughter's disinclination to him?

A. No, Sir; I did not.

Q. I would wish, Sir, to know the conduct of this gentleman towards your daughter, immediately after the marriage? What was it?

A. They lived very unhappily together?

Q. Did she bring him a fortune?

A. No, she did not.

Q. Why then, I suppose he married her for affection? He married her because he lov'd her?

A. I should have thought so.

Q. Can

Q. Can you state to the jury any misconduct in this gentleman towards her, which might produce those quarrels?—Did he follow other women?—Did he set her the example of any debauchery, or any other immoral conduct?

A. I cannot say he did? he sometimes drank.

Q. I will put this question to you, Sir; during the time you observed these bickerings, that took place in this family, did you ever see any disposition in your daughter towards lewdness or vice?

A. I never did.

Q. From what you know of her, have you any reason to suppose that she would fall into this sort of conduct, without the seduction of somebody?

A. No, Sir; I certainly have not.

Q. Had you any reason to believe she was ever guilty with any other person than Mr. Hawker?

A. I had no reason, nor any thing like it, to believe she was ever criminal with any other person.

Q. How soon after the marriage did she become acquainted with Mr. Hawker?

A. I do not know.

Q. I should be glad to know what was the nature of those disputes that took place between this gentleman and his lady?

A. There

A. There were many quarrels between them ; but the first that I recollect, was one night about getting into a hackney-coach ; there were four of us there.

Q. What did he say ?

A. He said he would rather walk home.

Q. Now, then, what did the lady say ?

A. She entreated him to come into the coach, and so did those who were with her.

Q. Well ; and what then ?

A. He then came into the hackney-coach.

Q. Go on, Sir, with this story, and tell us what followed ?

A. She then reproached him for being so rude and ungentleman-like, and for doing all this before some of her best friends.—Here the dispute ended.

Q. To be sure this was very rude and obstinate, not to come into the hackney-coach ; but was there any thing to occasion a separation from bed and board ?

A. No ; but there was a continuance of these quarrels.

Q. This, then, was the first remarkable instance that occurred ?

A. This was one of the most prominent disputes that made their appearance in the family. They were married in January, and this happened in February.

Re-examined

Re-examined by Mr. LEWES.

Q. I think, Sir, you said they lived very unhappily from the time of their marriage, to the time of their separation?

A. Exceedingly so, indeed.

Q. Had they any children?

A. No children.

Mr. ERSKINE.—Do you not know, Sir, that your daughter had a child?

A. I know, from being told, that she had a child by Mr. Hawker; but I never saw it.

Q. When did Captain Hawker become acquainted with your daughter?

A. I do not know.

Q. I wish you would give us an instance of those harmonious jangles that took place between your daughter and son-in-law?

A. I will, Sir; I heard a noise in the middle of the night——

LORD KENYON.—I am afraid these quarrels proceed very often from very small things, and put the parties in a very ridiculous situation.

Witness.—In the middle of the night I heard a stamping and swearing. I then got up, and reproached my son-in-

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law

law very much, for his indecent behaviour in my house ; my daughter said she was afraid of him. After a good deal of altercation, I, with difficulty, got them to bed again.

[Mr. LOUTON next read the Deed of Separation, which was dated May 31, 1786, the tenor of which was in the usual form of instruments of this nature ; the material parts were recited by Mr. BOWER, in his address to the Jury ; and that which appeared to be most important, we have distinguished by printing it in *Italics*.]

ANDREW SCOTT, *examined by Mr. BOWER.*

Q. Do you know the defendant, Mr. Hawker, Sir.

A. I do. He is a lieutenant in a regiment of dragoons, and his father is a clergyman.

Q. Has he any thing to support him but his pay ?

A. Nothing.

[Here ended the evidence for the defendant.]

REPLY.

R E P L Y.

Mr. ERSKINE replied as follows :

May it please your Lordship, and you, Gentlemen of the Jury,

I can by no means subscribe to a great deal which I have heard from the learned Counsel for the defendant. I subscribe to it thus far ; that it was his duty to urge those arguments which he has laid before you, and I subscribe further to the abilities and ingenuity with which he has urged them ; but I can by no means subscribe, and I trust my Lord will by no means do it, to many of the arguments which he has advanced for the protection of his client.

I do admit, that as Divines or Moralists, or as Administrators of Criminal Justice, you are not to decide as against men acting against the Law of God and of Morality : but I say, where the conduct of the defendant, even in a civil suit, is connected with the interests of society, and the preservative of the peace of mankind, that it becomes a matter of infinitely more serious consequence ; and therefore, as he who has invaded the rights of individuals, is more dangerous than others, by having set a bad example to society, so he deserves a more severe punishment.

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It has been said, that my client does not come into a court of justice, under circumstances to claim the compassion of a Jury; and that the defendant being one of the children, and the son of a clergyman without property, ought therefore to go free.

Gentlemen of the Jury, The defendant in the last cause, who was my client, was one of many children, and stood in a very different situation from the present defendant. He was a man deprived of the faculties of his mind, and the health of his body; and must go to prison, without the possibility of paying those damages that were imposed on him by the Jury. Does this involve a censure on the verdict that was given in that case? Far from it! God forbid, that a man who has nothing but his commission in the army, might commit heinous crimes, and then be permitted to plead his poverty; he might then break into your house—he might violate your wife, and might deflower your daughter:—in short, he might do every one act to which the law attaches a punishment, if he had only to plead his poverty; and then to be set free from all the consequences of his villainy.

There is another observation which I must make on my learned friend's opening to you. Said he " I shall prove to
 " you, that this was an unhappy marriage from the begin-
 " ning;—that the wife's affections were alienated from the
 " husband, and that consequently he could not have had
 " much

“ much comfort in the married state.” My learned friend, who says that the husband has lost nothing—Has he not? If this woman brings forth children, they must inherit his fortune.

A man may disapprove of his wife in many respects; but many men, however, so long as their wives hold true to the marriage vow, and do not disgrace their husbands, and contaminate their beds, will bear with many of the errors or follies of human nature.

No man deserves the name of a man, who does not feel the sense of female honour in his wife.—After a man is notoriously injured in the honour of his bed, he cannot hold up his head in society, to be pointed at as he passes.

Now, Gentlemen, in the first place this lady’s father has been called before you :—he is the author of her being—he is the author of her education—he had an opportunity of marking her from her cradle to her marriage.

The temper and disposition of women are very easily observed; and women, who are loose from the temperament of their minds and bodies, are very early discovered.

The father was shocked at my putting the question to him, Whether his daughter was criminal with any other person?

Gentlemen, My learned friend was anxious to convince you that the plaintiff had sustained no loss, because there were some bickerings between him and his wife: because

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people

people are not angels, does it follow from thence that there is no comfort belonging to that situation?

Because a man may have some paltry disputes with a woman with whom he lives, does it from thence follow, that they have no affection and regard for each other? May not he bring back her wandering imaginations? May he not, by constant attention to her, although she does not love her husband, who ought to be the object of her affections—may they not acquire a mutual affection for each other, by the children that might be produced?—She was not naturally barren;—you have heard she had a child by this man.—She might have born children that might have been pledges of their affection—that might have been a bond of union, and all these quarrels put an end to.

They have not been able to shew that Mr. Barttelot was inattentive to her, or that he followed other women; none of these things have appeared; and yet you, Gentlemen of the Jury, sitting in an English Court of Justice, are desired by my learned friend to believe that the husband has lost nothing.

The defendant, taking the advantage of the husband's absence, was received into the family as an acquaintance, and took the opportunity of debauching the plaintiff's wife.

Gentlemen,

Gentlemen, I cannot suppose that men of your decent manners—I cannot suppose that men of your moral behaviour—I cannot suppose that men of your religious education, can countenance a conduct of this sort, either as public or private men.

I have another position to lay before you; and it is this: for you must be satisfied in an act of adultery—No man commits crimes in the face of the public, as he enters into contracts.

You must collect the evidence circumstantially. People do not commit adultery, and invite others to be witnesses to the scene. But mark the evidence: The defendant lounges about the door—waits for the opportunity—conceals his person from observation—and at last gets into the bed-chamber of a married lady, and remains there all night. Now, are you to presume—my learned friend, with a great deal of good sense, has made no such observation—are you to presume *they sat up all night*—that a man who came here for the purpose of adultery, which is evident from what followed, went into her bed-chamber for this purpose of sitting up all night? Common sense rejects the idea.

I have only one observation more to make. The father had not an opportunity of telling you how long Captain Hawker was introduced to his daughter. You find them acquainted in the year 1785. How can you tell but that these
quarrels

quarrels were first occasioned by his seduction; and that all these differences might have been put an end to by children? Mr. and Mrs. Barttelot might have been honourable members of society; they are now driven into this separation by the gross misconduct of the defendant; who, by his counsel, says, that the husband has lost nothing, and that the alienation of Mrs. Barttelot's affection from her husband was chiefly owing to their difference of temper.

There is nothing more serious than the preservation of morality; this is essential to the very being of a nation; for when there is a want of morals, there is an end of every thing that is great and honourable among men.

I trust, Gentlemen, because some disputes subsisted between Mr. and Mrs. Barttelot, you will not think that the husband has lost nothing; but will give him a verdict in damages suited to the circumstances of his case.

LORD KENYON'S *Address to the Jury.*

Gentlemen of the Jury,

You have tried two causes of this sort this morning.

The most likely way to preserve men in the road of their duty is, by implanting in their breasts *sentiments of religion and virtue*. When this fails, the next source is *punishment*; and in causes of this kind, it depends upon juries not to let
men

men go from this Court, without smarting for the injuries they have done to their neighbours, and for the wretched state to which they have reduced the private peace of families.

That the relation of husband and wife subsisted between Mr. and Mrs. Barttelot has been proved.

There are two questions in this case for your consideration:—

First—Whether the defendant has been *guilty of the charge which has been imputed to him?* And,

Secondly—If you find him guilty, what *damages* are to be given?

Now, it has been very properly said, that in offences of this kind, and in general, persons who are guilty do not summon witnesses to prove their guilt. You must prove it as well as you can from circumstances; and if they are cogent and convincing, you must give them the same force as if you had been eye or ear witnesses.

In order to prove this party guilty, the first witness stated instances of extreme indelicacy between their persons. The other witnesses have carried the case further; for Mr. and Mrs. Barbic, who live at Canterbury, proved that they heard, at an improper hour of the night, the voice of a man in Mrs. Barttelot's bed-chamber. Mrs. Barbic says,—That the defendant went up stairs about *eleven or twelve o'clock at night*;

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he passed her briskly, and she did not distinguish him ; but in the morning she saw him come down. But it is said, she was not in the room. Nor was it necessary ; he had no business there, but for the purpose which this cause imputes to him.

Gentlemen, It is for you to deliberate on that ; and if you are led to believe, that this act was done at that time, as, I confess, it seems so to me, the conclusion follows of course.

The next point is—The *damages* you will give. And, no doubt, it is no apology to say, “ I am poor : ” and it would be reading a very bad lesson to tell young officers, or any other persons, “ On account of your poverty you may commit “ offences up to any extent ; you may invade the dearest “ rights of mankind, and your poverty shall be spread before you as a shield.”

There are some circumstances to extenuate, and others to aggravate this offence. It is an aggravation to defile the bed of a married man, as he is deprived of the comfort and conversation of his wife. To be sure, it is often pressed, and not improperly, that this offence is not so aggravated, because there were no children. Although this is so, yet this offence is equally a breach of religion and morality.

An act of adultery has been proved in the year 1785. In the *following* year articles of separation took place.

Gentlemen,

Gentlemen, I leave this entirely with you to say—First, Whether his is guilty?—And then, if he is—What damages are to be given to the injured party?

The Foreman of the Jury asked, Whether Mrs. Barttelot's child, by Mr. Hawker, must inherit the estate of Mr. Barttelot.

LORD KENYON said, This must depend on circumstances.

The Jury immediately found a verdict for plaintiff.—
Damages SEVEN HUNDRED POUNDS.

THE END.

Book 1

(55)

Whether his is dignity?—And then, is he a—What dignity?

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